

IN THE SUPREME COURT OF THE STATE OF NEVADA

DAVID LEWIS,
Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK, AND THE HONORABLE
KATHY A. HARDCASTLE, DISTRICT
JUDGE,

Respondents,

and

MAYA K. LEWIS,
Real Party in Interest.

No. 48518

FILED

JAN 11 2007

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. R. [Signature]*
CHIEF DEPUTY CLERK

ORDER DENYING PETITION FOR WRIT OF MANDAMUS

This original petition for a writ of mandamus challenges Eighth Judicial District Court Chief Judge Kathy Hardcastle's refusal to order a hearing on petitioner's affidavit of bias and prejudice against Family Court Judge Jennifer Elliott. The petition and its exhibits reflect that Judge Elliott initially struck the affidavit as untimely, but then later she directed petitioner to file a motion asking Chief Judge Hardcastle to appoint a judge to hear the disqualification matter. The petition further asserts that Chief Judge Hardcastle has refused to set a hearing on the affidavit.

A writ of mandamus is available to compel the performance of an act that the law requires, or to control an arbitrary or capricious

exercise of discretion.¹ But mandamus is an extraordinary remedy, which is entirely discretionary with this court and which is warranted only when petitioner has no plain, speedy, and adequate remedy at law.² We have held that a writ petition is the appropriate vehicle for challenging judicial disqualification rulings.³

Having reviewed the petition and its exhibits, we decline to intervene by way of extraordinary relief in this instance. First, Judge Elliott properly determined that she could consider the affidavit's timeliness.⁴ Second, she also properly determined that, as she had already ruled on several contested matters, the affidavit was untimely and should be stricken.⁵ Thus, Chief Judge Hardcastle was not obligated to hold a hearing on an affidavit that was properly stricken as untimely. Finally, petitioner has an adequate remedy at law in the form of a motion under the Code of Judicial Conduct Canon 3E, as described in our 2005

¹See NRS 34.160; Round Hill Gen. Imp. Dist. v. Newman, 97 Nev. 601, 637 P.2d 534 (1981).

²Smith v. District Court, 107 Nev. 674, 818 P.2d 849 (1991); NRS 34.170.

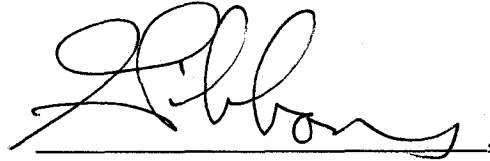
³Towbin Dodge, LLC v. Dist. Ct., 121 Nev 251, 112 P.3d 1063 (2005).

⁴Id.

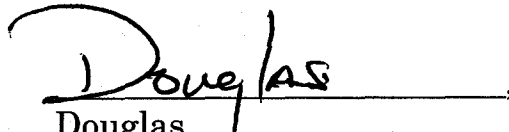
⁵Id.; Valladares v. District Court, 112 Nev. 79, 83-84, 910 P.2d 256, 259-60 (1996).

opinion, Towbin Dodge, LLC v. District Court.⁶ Accordingly, writ relief is not warranted, and we deny the petition.⁷

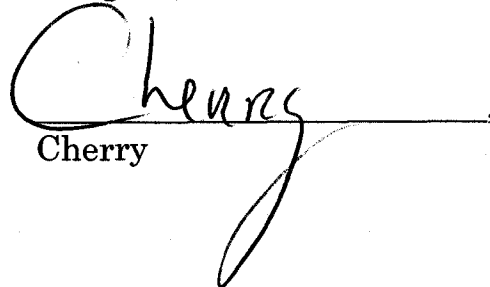
It is so ORDERED.



Gibbons J.



Douglas J.



Cherry J.

cc: Hon. Jennifer Elliott, District Judge, Family Court Division
Hon. Kathy A. Hardcastle, District Judge
Steven J. Szostek
Wells & Rawlings
Clark County Clerk

⁶ 121 Nev. 251, 112 P.3d 1063.

⁷NRAP 21(b); Smith v. District Court, 107 Nev. 674, 818 P.2d 849 (1991).